

WESLEY LEININGER

IBLA 76-532      Decided November 15, 1976

Appeal from decision of Redding, California, District Office, Bureau of Land Management, rejecting grazing lease application C 930-1.

Affirmed.

1.      Grazing Leases: Applications—Grazing Leases: Preference Right  
Applicants—Grazing Leases: Renewal

A District Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criteria including historical use and needs of the applicants, and there are no convincing reasons warranting a change of lessee.

2.      Grazing Leases: Applicants—Grazing Leases: Renewal

Where a District Manager renews a grazing lease and denies a conflicting application, he may require as a condition to continuance of the lease that the applicant for the lease renewal fence that portion of National Resource Lands adjacent to land leased by the conflicting applicant, in order to prevent trespass of the livestock belonging to the applicant for the lease renewal.

APPEARANCES: Thomas J. McGlynn, Esq., Pugh & McGlynn, Red Bluff, California, for appellant, and Melvin Brunetti, Esq., Laxalt, Berry & Allison, Carson City, Nevada, for Occidental Land, Inc.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Wesley Leininger appeals from a decision of the Redding, California, District Office, Bureau of Land Management, rejecting his grazing lease application C 930-1 filed pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). <sup>1/</sup> The District Manager awarded a lease, which included the lands for which appellant had applied, to Charles Orwick, who had sought renewal of his prior lease. The District Manager required Orwick, as a part of lease continuance, to provide control of his stock by fencing National Resource Lands (NRL) adjacent to private land leased by appellant. The lands involved in the dispute are:

T. 29 N., R. 2 W., M.D.M.

Section 8: SW 1/4, W 1/2 SE 1/4  
Section 18: Lots 3, 4, E 1/2 SW 1/4,  
SE 1/4 (S 1/2)

T. 29 N., R. 3 W., M.D.M.

Section 24: S 1/2

Prior to 1971, the NRL along Inks Ridge were divided between two lessees, Barbara Poe and E. V. Wing, who owned ranches bordering on these lands. The Poe ranch, located on the west side of these lands, was purchased by Orwick who was assigned the Poe grazing lease on November 15, 1971. The Wing ranch situated on the east side was sold to Newport Investments in 1970, which filed for an assignment of the Wing lease on January 14, 1971. The lease, however, had expired, and Orwick applied for and received a lease on January 5, 1971, for part of the lands which had composed the Wing lease. On January 21, 1971, Newport Investments was notified that Orwick had leased these lands and that the remainder of the lands were still available for leasing. Newport Investments made no attempt to lease the remaining lands. In December 1971, Orwick received a lease for these remaining lands.

Orwick presently leases all the NRL in four cornering sections that straddle Inks Ridge. A drift fence runs along the ridge dividing sections 8 and 18 in a diagonal fashion.

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<sup>1/</sup> Occidental Land, Inc., owner and lessor of the property leased to appellant intervened in this appeal, adopting the statement of reasons filed by appellant.

Occidental Land, Inc., present owner of Wing Ranch, leases the property to one Etchevery. Appellant subleases the grazing rights on 9,000 acres of the ranch which is adjacent to the NRL in question.

Orwick applied for a renewal of his grazing lease on November 3, 1975. A conflict arose on November 5, 1975, when appellant filed an application which included lands in Orwick's application. The lands in controversy lie generally east of the drift fence.

Appellant contends that he should be leased the land east of the drift fence because Orwick cannot contain his cattle to the NRL. Orwick contends that he has preference and that appellant's cattle trespass on NRL which Orwick leases. Tehama County in which the disputed land is situated is designated as closed range which requires an operator to contain his stock.

BLM urged the parties to reach a settlement, but this was not accomplished. On January 29, 1976, the District Manager, Redding District Office, rendered his decision granting the lease to Orwick. The District Manager found that both applicants were qualified to lease lands under 43 CFR 4121.1-1 and that both have equal preference by owning or leasing contiguous lands according to 43 CFR 4121.1-1(c) [sic]. As for the needs of the applicants, Orwick contends that although he has adequate irrigated pasture for summer range, the additional winter range the NRL provides is needed to round out his ranching operation. The District Manager found that Leininger's main objective in filing the application was to resolve the alleged trespass situation. He stated that both needs appeared to be supplemental by BLM definition but that Orwick's need seemed to be greater than that of appellant. Regarding the historical use of the land, he found that Orwick has leased NRL on Inks Ridge since 1971 and the land in conflict since 1972, but that appellant has not previously applied for and has had no historical use of the land in conflict. He noted that topography does not play a significant part in the range use. He pointed out that cattle can graze from either side of the ridge and that water is adequately dispersed along the ridge.

Having considered these factors, the District Manager concluded that the lease should remain with Orwick. Under the authority of 43 CFR 4125.1-1(i)(11) he held that as part of lease continuance, Orwick should be required to provide control of his stock by fencing the NRL which is adjacent to the old Wing Ranch.

In his statement of reasons, appellant raised these issues:

1. That the decision was based on an error in fact that Leininger had no need for any additional pasture or feed.
2. That the decision was based upon an error in fact that Orwick's needs exceeded Leininger's.
3. That the decision appealed from creates an immediate trespass situation which can only be rectified by fencing which would require exorbitant expense in relation to the lease period.
4. That the leases as granted are not granted on the basis that the topography and the ownership of the property in question dictates, but on an arbitrary basis without consideration to topography, ownership and fencing.
5. That the decision does not comply with local regulation, being Tehama County Fence Law, in that it does not specifically require Orwick, the prevailing party, to fence in the Bureau of Land Management land.

The guidelines for the adjudication of conflicting applications are set forth in 43 CFR 4121.2-1(d)(2) as follows:

The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application (where access is not presently available), and (vii) other land use requirements. [Footnote omitted.]

Appellant states that the District Manager's decision was based on an error of fact, that appellant had no need for additional pasture or feed; however, appellant has not presented any evidence to support a finding that such a need exists or that his need is greater than Orwick's.

[1] In his decision the District Manager specifically considered ownership, topography and fencing. Appellant has failed to show how the District Manager's consideration of these elements was arbitrary. Since the District Manager's decision was predicated upon the regulatory criteria of 43 CFR 4121.2-1(d)(2) and appellant offered no convincing reasons for warranting a change of lessee, the decision will be sustained. Frederick & Nida Gorwill, 17 IBLA 13 (1974); Bernard N. and Nobel R. Friend, 15 IBLA 119 (1974); John Ringheim, 10 IBLA 270 (1973).

[2] The fencing requirement in the District Manager's decision applied only to Orwick, who has not appealed from that requirement. Thus the motivating reason behind Leininger's appeal has been satisfied. See John Ringheim, supra at 274.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

